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5 BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
6 STATE OF MONTANA

7 IN THE MATTER OF THE PROPOSED)
8 DISCIPLINARY TREATMENT OF)
9 CLC INCORPORATED,)

10 Respondent.)

Case No. INS-2005-25

CONSENT AGREEMENT
AND FINAL ORDER

11 The State Auditor and Commissioner of Insurance of the state of Montana
12 (Commissioner) and the Montana Insurance Department (Department), pursuant to the authority
13 of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, hereby make the following
14 fact assertions and conclusions of law which justify and support disciplinary treatment:

15 **FACT ASSERTIONS**

16 1. Respondent CLC Incorporated, formerly Consolidated Legal Concepts, Inc.,
17 (hereafter, CLC) operates a legal assistance plan that is principally provided by employers to their
18 employees or by employee associations to their members in the nature of an employee assistance
19 plan. CLC has an office at 4170 Douglas Boulevard, Granite Bay, California 95746.

20 2. Respondent CLC has an arrangement with United Service Association for Health
21 Care, Inc., 1901 N. Highway 360, Grand Prairie, Texas 75050, (USA+) in which persons who
22 purchase a membership in USA+ also receive a legal assistance benefits from CLC.

23 3. Since January 1, 2003, USA+ has sold approximately 154 memberships in
24 Montana which include the legal assistance benefits provided by CLC.

25 4. Since January 1, 2003, USA+ has used several business entities and
26 approximately 91 individuals to solicit and sell memberships in USA+ which include the CLC
27 legal assistance benefits provided by CLC.

5. The Montana members of USA+ do not receive their USA+ membership through union membership or an employee assistance plan.

6. The legal assistance benefits provided by CLC to USA+ members include specified legal services such as the preparation of a will or review of an existing will and unlimited initial telephone consultations at no additional cost to the consumer.

7. CLC does not have a certificate of authority issued by the Commissioner and Department to transact prepaid legal insurance.

8. The legal assistance benefits contract provided by CLC to USA+ members has not been filed with or approved by the Commissioner and Department. The persons and entities selling USA+ memberships, which include CLC legal assistance benefits, are not licensed as insurance producers by the Commissioner and Department and have not been appointed to represent an insurer.

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance (Commissioner) pursuant to Mont. Code Ann. § 2-15-1903.

2. The Insurance Department (Department) is under the control and supervision of the Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

3. The Commissioner shall administer the Department to protect insurance consumers. Mont. Code Ann. § 33-1-311.

4. Pursuant to Mont. Code Ann. § 33-1-215(1), “prepaid legal insurance means the assumption of a contractual obligation that is to be spread, directly or indirectly, among a group of persons to provide specified legal services or reimbursement for legal expenses in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiary or by a third person on behalf of the beneficiary.” Excluded from the definition of prepaid legal insurance are: plans providing only a referral service or a discount card for legal services; and legal services provided by unions or employee associations to members pertaining to employment or occupation. Mont Code Ann. § 33-215(2). Prepaid legal

1 insurance is a type of casualty insurance and is regulated by the Commissioner and Department.

2 *See* Mont. Code Ann. § 33-1-215(3).

3 5. Pursuant to Mont. Code Ann. § 33-1-201(6), an insurer is any person or entity
4 “engaged as an indemnitor, surety, or contractor in the business of entering into contracts of
5 insurance.”

6 6. No person or entity shall act as an insurer and/or transact insurance in Montana
7 except as authorized by a certificate of authority issued by the Commissioner and Department.
8 Mont. Code Ann. § 33-2-101.

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10 7. The legal assistance product provided by CLC to USA+ members constitutes
11 prepaid legal insurance pursuant to Mont. Code Ann. § 33-1-215.

12 8. Contracts of insurance must be filed with an approved by the Commissioner and
13 Department prior to using the same in Montana. Mont. Code Ann. § 33-1-501.

14 9. Persons or entities acting as insurance producers, by selling, soliciting and
15 negotiating contracts of insurance, must be licensed by the Commissioner and Department prior
16 to acting as such. Mont. Code Ann. §§ 33-17-201 and 33-17-211.

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18 10. By transacting prepaid legal insurance without a certificate of authority, CLC is in
19 violation of Mont. Code Ann. § 33-2-101.

20 11. By issuing an unapproved prepaid legal insurance contract to members of USA+,
21 CLC is in violation of Mont. Code Ann. § 33-1-501.

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23 12. By using unlicensed, unappointed insurance producers to sell prepaid legal
24 insurance, which is included in USA+ memberships, CLC is in violation of Mont. Code Ann. §§
25 33-17-201, 33-17-231, and 33-17-236.

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27 13. Pursuant to Mont. Code Ann. § 33-1-317, the Commissioner may impose an
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1 administrative fine of up to \$25,000.00 per each violation.

2 **AGREEMENT**

3 The Department and Respondent CLC hereby stipulate and agree to the following:

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5 1. The Commissioner and Department have jurisdiction over the subject matter of
6 the above-entitled proceeding.

7 2. Respondent acknowledges that it was advised of the right to be represented by
8 legal counsel and if represented by legal counsel, that such legal representation was satisfactory.

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10 3. Respondent acknowledges that its authorized representative signing this Consent
11 Agreement and Final Order has read and understands each term of this Consent Agreement and
12 Final Order. Respondent acknowledges that it enters into this Consent Agreement voluntarily,
13 and without reservation. Respondent acknowledges that its authorized representative signing this
14 Consent Agreement is not under the influence of alcohol or drugs (prescription or otherwise) and
15 that he or she does not suffer from any emotional disturbance or mental disease or defect that
16 would render him or her not competent to sign this Consent Agreement. Respondent further
17 acknowledges that this Consent Agreement constitutes the entire agreement between the parties
18 and that no other promises or agreements, either express or implied, have been made by the
19 Department or by any member, officer, agent or representative of the Department to induce
20 Respondent to enter into this Consent Agreement.

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22 4. The Department contends as set forth in the preceding Fact Assertions and
23 Conclusions of Law and Respondent admits the same. The Department and Respondent have
24 elected to resolve these matters as follows:

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26 (a) As of August 31, 2005, Respondent CLC has ceased providing the
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1 preparation or review of will to USA+ members at no additional charge;

2 (b) As of August 31, 2005, Respondent CLC has ceased providing unlimited
3 initial telephone consultations to USA+ members at no additional charge;

4 (c) Respondent CLC will cease providing in-office initial consultations to USA+
5 members at no additional charge and will instead will provide in-office initial consultations at a
6 75% discount from the attorney's standard hourly fee. CLC will send a written notice to current
7 USA+ members and any other affected Montana consumers providing that this benefit change
8 will be effective 30 days from the date of the written notice. CLC will provide a draft of the
9 written notice for Department review and approval prior to issuing the same. By February 15,
10 2006, CLC will provide a draft notice to the Department for review and approval. Within 15
11 days following Department approval of the draft notice, CLC will ^{IN COOPERATION WITH USA+} send the notice to USA+ *J.P.*
12 members and any other affected Montana consumers and will provide a complete mailing list to
13 the Department of the Montana consumers who will be receiving the notice;

14 (d) Respondent CLC may provide a referral and discount service plan for legal
15 services to Montana consumers, whether the CLC products are provided directly to the consumer
16 or are included with a consumer's membership in another entity or organization such as USA+;

17 (e) Respondent CLC will obtain a certificate of authority from the Montana
18 Secretary of State's Office to transact business in Montana as a foreign corporation and will
19 provide a copy of the same to the Department. If Respondent CLC does not obtain this
20 certificate of authority by March 1, 2006, CLC will cease operations in Montana and will ^{IN COOPERATION WITH USA+} send a *J.P.*
21 written notice to current USA+ members and any other affected Montana consumers advising
22 that CLC will cease all operations and business in Montana to be effective 30 days from the date
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1 of the written notice. CLC will provide a draft of the written notice for Department review and
2 approval prior to issuing the same. By March 10, 2006, CLC will provide a draft notice to the
3 Department for review and approval. Within 15 days following Department approval of the draft
4 notice, CLC will ~~send~~ ^{IN COOPERATION WITH USA+} the notice to USA+ members and any other affected Montana consumers
5 and will provide a complete mailing list to the Department of the Montana consumers who will
6 be receiving the notice;
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8 (f) If Respondent CLC wishes to transact prepaid legal insurance, Respondent
9 CLC shall first comply with requirements of the Montana Insurance Code, Mont. Code Ann. §
10 33-1-101, *et seq.*, and any administrative rules including, but not limited to, first obtaining a
11 certificate of authority from the Commissioner and Department;
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13 (g) For violations of the Montana Insurance Code, Mont. Code Ann. § 33-1-101,
14 *et seq.*, the Commissioner may impose a maximum fine of \$25,000.00 per each violation
15 pursuant to Mont. Code Ann. § 33-1-317. For all violations set out in this Agreement,
16 Respondent CLC will pay an administrative fine of \$1,000.00 to the Department within 30 days
17 following the signing of the Final Order in this matter;
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19 (h) The Department and Respondent agree that this Consent Agreement and
20 Final Order resolve the violations set out herein;
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22 (i) Respondent specifically and affirmatively waives a contested case hearing and
23 all rights to appeal under the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-
24 101, *et seq.*, and elects to resolve this matter on the terms and conditions set forth herein;
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26 (j) Respondent agrees that compliance with this Consent Agreement and Final
27 Order shall be a final compromise and settlement of the matters set forth herein;
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1 (k) Respondent fully and forever releases and discharges the Commissioner,
2 Department, and all Department employees from any and all actions, claims, causes of action,
3 demands, or expenses for damages or injuries, whether asserted or unasserted, known or
4 unknown, foreseen or unforeseen, arising out of the factual allegations or conclusions in this
5 Consent Agreement; and
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7 (l) The Department and Respondent agree that this Consent Agreement shall be
8 incorporated and made a part of the attached Final Order issued by the Commissioner herein.
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10 5. Respondent further understands that, upon the signing of the Final Order by the
11 Commissioner or his representative, this Consent Agreement and Final Order will be an order of
12 the Commissioner and failure to comply with the same may constitute separate violations of the
13 Montana Insurance Code, pursuant to Mont. Code Ann. § 33-1-318 and/or other applicable
14 statutes or rules, and may result in subsequent legal action by the Department.
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16 6. Respondent understands that this Consent Agreement is not effective until such
17 time as the following Final Order is signed.

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1 7. Respondent understands that this Consent Agreement and Final Order are public
2 records under Montana law and as such may not sealed or otherwise withheld from the public.
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4 CLC INCORPORATED, RESPONDENT

5 By: [Signature]
6 Printed Name: JOHN G. PERLEY
7 Its: NICE PRESIDENT

2/2/06
Date

8 Subscribed and Sworn to before me this 2nd day of Feb., 2006.



[Signature]
Notary Public for the State of California
Residing at 5338 Cogby Ct. Truckee Ca 95628
My commission expires Aug 12, 2009

13 ACCEPTED ON BEHALF OF THE INSURANCE DEPARTMENT:

14
15 [Signature]
16 Jennifer Massman, Staff Attorney

2-3-2006
Date

1 **FINAL ORDER**

2 Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. § 33-
3 1-101, *et seq.*, and upon review of the forgoing Consent Agreement and good cause appearing
4 therefor,
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6 IT IS ORDERED that the foregoing Consent Agreement between the Insurance
7 Department and CLC Incorporated is hereby adopted as if set forth fully herein.

8 DATED this 3rd day of February, 2006.

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10 JOHN MORRISON
State Auditor and Commissioner of Insurance

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13 By: Alicia Pichette
14 Deputy Insurance Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of FEBRUARY, 2006, I served a true and accurate copy of the foregoing Consent Agreement and Final Order upon the Respondent and Department, by mail, postage prepaid, or by hand-delivery at the following address:

John Jay Pefley, Esq.
Vice President
CLC Incorporated
4170 Douglas Blvd.
Granite Bay, CA 95746

Jennifer Massman
Staff Attorney
Insurance Department


